

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

JARREN GENDREAU
Plaintiff,

v.

JOSUE D. CANARIO,
In his capacity as Chief of Police of
the Bristol Police Department; and the
Town of Bristol, Rhode Island.
Defendants.

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: **C.A. No.: 1:14-cv-00337-M-LDA**
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DEFENDANTS JOSUE D. CANARIO AND THE TOWN OF BRISTOL'S
MEMORANDUM IN SUPPORT OF THEIR MOTION TO STRIKE PLAINTIFF'S
FIRST AMENDED COMPLAINT

I. Facts and Travel

On June 19, 2015, Plaintiff Jarren Gendreau, through his attorney, filed a motion with this Court requesting leave to amend his complaint pursuant to Rule 15(a)(2) of Fed. R. Civ. P. Attached to his motion was: (1) a memorandum of law in support of granting leave to amend; and (2) the Proposed Amended Complaint. The first sentence of his memorandum in support of his motion reads: "Now Comes Plaintiff, Jarren Gendreau, and Respectfully moves this Honorable Court, pursuant to Rule 15 of the Federal Rules of Civil Procedure, for leave to file an AMENDED COMPLAINT, *a copy of which is attached hereto.*" (Emphasis added.) This document, hereinafter "Plaintiff's Proposed Amended Complaint," is attached hereto and herein incorporated as **Exhibit A**.

Defendants did not object to Plaintiff's motion, and leave to amend was granted by this Court on July 8, 2015. Defendants began preparing their Answer to Plaintiff's First Amended Complaint immediately after this Court granted leave to amend, and that answer was completed on July 13, 2015. As the First Amended Complaint had yet to be properly filed with this Court,

Plaintiffs were unable to file their Answer at that time. In a show of good faith, counsel for Defendants contacted counsel for Plaintiff on July 17, 2015, to remind him to file Plaintiff's First Amended Complaint. No reply was ever received.

On September 21, 2015—approximately 2½ months after this Court granted leave to amend—Plaintiff actually filed his First Amended Complaint. Plaintiff's First Amended Complaint, as filed, is attached hereto and herein incorporated as **Exhibit B**. That document deviated from the Proposed Amended Complaint filed with, and approved by, this Court. The material highlighted in YELLOW on page 7 of Plaintiff's Proposed Amended Complaint was removed, and the material highlighted in GREEN on page 13 Plaintiff's First Amended Complaint was added. See **Ex. A**; **Ex. B**.

II. Argument

Defendants do not object to the changes in Plaintiff's Proposed Amended Complaint, but do object to changes in Plaintiff's First Amended Complaint as filed; specifically, as noted on page 13 of **Exhibit B**, an additional demand for attorney's fees pursuant to Rhode Island law. Plaintiff should have filed exactly the same Proposed Amended Complaint that was attached to his motion for leave to amend, without any additions or deletions.

This Court has granted leave only for the Proposed Amended Complaint. If Plaintiff desires additional amendments, he must file a second motion for leave to amend, thus granting Defendants the ability to object and be heard as necessary. Defendants were surprised to discover inconsistencies between the Proposed Amended Complaint and the Amended Complaint that was actually filed thereafter. Plaintiff has further caused undue delay in filing his First Amended Complaint more than two months after this Court granted leave to amend.

III. Conclusion

For the foregoing reasons, Defendants request this Court to strike Plaintiff's First Amended Complaint, and order Plaintiff to file the Proposed Amended Complaint as this Court's July 8, 2015 order initially permitted, or, in the alternative, to file no amended complaint at all, and allow this case to advance to summary judgement.

DEFENDANTS,
By Their Attorney,

/s/ Michael A. Ursillo
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CERTIFICATION

I, the undersigned, hereby certify that on September 25, 2015, I caused a true copy of the within Answer to be filed electronically with the Court's CM/ECF system with copies electronically forwarded to all counsel of record.

/s/ Michael A. Ursillo